

COPY

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 07 CV 11636

4 -----x
5 GRISELDA BIELINSKI and
6 MARIO PARDO,

7 Plaintiffs,

8 -against-

9 HOTEL PIERRE,

10 Defendant.

11 DEPOSITION of MARIO PARDO, taken by the
12 Defendant at the offices of Kane Kessler, P.C.,
13 1350 Avenue of the Americas, New York, New York
14 10019, on April 28, 2008, at 2:35 o'clock p.m.,
15 before Catherine M. Donahue, a Certified Court
16 Reporter and Notary Public within and for the
17 State of New York.

18
19
20 ROSENBERG AND ASSOCIATES
21 Certified Court Reporters & Videographers
22 575 Madison Avenue
23 New York, New York 10022
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2 retire."

3 That's what I told him.

4 Q. Did you say that you can take better
5 care of your family, that's why you wanted the
6 job?

7 A. Yes, to promote that, yes, that's
8 true.

9 Q. And because you didn't have to carry
10 so much weight as a captain?

11 A. That, too. Like supervisor, you
12 know, yes, that's true, I told him that.

13 Q. Did you think that was the best
14 answer to that question in an interview?

15 A. No. I was sincere. I was sincere.
16 I wasn't trying to like -- I was sincere.

17 Q. Are you telling me that
18 Mr. Hommerich asked you how old you were?

19 A. I think it was, like he said, what
20 are you planning to do. And I told him, I said,
21 how old are you, and I told him how old I was.

22 Q. Did he ask you how old you were?

23 A. No, I told him.

24 Q. Okay.

25 By the way, when you said you would

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2 be better able to take care of your family, what
3 did you mean by that?

4 A. I mean to be better. You know,
5 better living, because I would make a lot more
6 money; so, it is obvious.

7 Q. You wanted the job because it would
8 pay more?

9 A. It would pay more.

10 Q. During the interviews with Bill
11 Spinner and Mr. Hommerich, did either of them
12 say anything negative about your age?

13 A. No. No.

14 Q. And nobody said you're too old for
15 this job?

16 A. No. No.

17 Q. Did any of them ask any questions
18 that you thought were discriminatory on the
19 basis of age?

20 A. On the basis of age? I don't
21 remember.

22 Q. Did anybody else in management
23 during this entire process say anything to you
24 about your age?

25 A. No. No.

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2 Q. Has anyone in management ever said
3 anything to you about your age?

4 A. You're talking about management,
5 right?

6 Q. Management, yes.

7 A. No.

8 MR. SCHWARTZ: I'm just going to
9 object to the form. The question is
10 whether banquet captains are management
11 or not.

12 MS. STOLL: Excluding captains.
13 BY MS. STOLL:

14 Q. Excluding captains. Just for the
15 purpose of this question, now I'm going to ask
16 you that question about captains.

17 Did any of the captains say anything
18 negative about your age with respect to your
19 taking the captain's position?

20 A. They would say you have many years
21 to carry dishes. You have more years to carry
22 dishes.

23 Q. Did you take that as a negative
24 comment about your age?

25 A. I think the way I take it, they say

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2 you have to the carry dishes all your life.

3 That's the way I take it.

4 Q. Was that a comment about your age,
5 though?

6 A. What could it have been?

7 Q. Okay.

8 So, basically, they were still
9 saying you're still capable of carrying dishes?

10 A. I'm capable until 120 years.

11 Q. I don't know about that.

12 Do you believe that the process that
13 the hotel went through in the interviews that
14 you went through were fair?

15 A. No.

16 Q. Why not?

17 A. Because when Mr. Laut announced
18 himself that he was going to become a captain,
19 he worked for I think one week and he
20 disappeared for a month. It was more than 15
21 days. They told him to take off. I don't know
22 why.

23 Q. Let's talk about that day.

24 Were you at work on March 17?

25 A. March 17, that was St. Patrick's

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2 present when he made the announcement?

3 A. Management, no. He was by himself
4 and the crew of waiters. No management was
5 there.

6 Q. Did you think it was strange that
7 none of the management people made the
8 announcement?

9 A. I was the first one to ask him, "Why
10 don't you wait until management announced? Why,
11 you did this wrong? It was a surprise. You
12 have to wait for management to say it."

13 He said, "Oh, no. It is okay." He
14 told me like that.

15 Q. Do you know what they were talking
16 about before they came out of that room?

17 A. No, I don't know what they were
18 talking about.

19 Q. In your complaint you and GiGi both
20 allege that Jay is less qualified than you, than
21 you and she.

22 A. Okay.

23 Q. Why do you believe that Jay is less
24 qualified?

25 A. I believe because I have more

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2 knowledge than him. I have been there long

3 enough. I know the customers by their names.

4 The customers know me. And I have been a

5 delegate, assistant delegate. I know how they

6 do the scheduling. I know how to do the

7 diagrams. I know the payroll.

8 Q. Did you think that being a union
9 delegate was one of the criteria for --

10 A. I think so, because for the past
11 practice, all the delegates became a captain.
12 Jack Salmeiri. Jack Racic was a delegate. They
13 became a captain.

14 Q. Do you think that was an important
15 consideration for management to take into
16 consideration?

17 A. Management, I think, is how you call
18 this, is pushed to do that.

Q. You think they're pushed to do it?

20 A. I don't know. I don't know because
21 there is a pattern. All the delegates that
22 became delegates became the captain.

23 Q. You mentioned that you thought that
24 that was one of the qualifications that you had.
25 You had served as assistant delegate?

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2 A. Yes.

3 Q. Did you think that was a positive in
4 your resume that you had that experience?

5 A. Yes. Yes, of course. Because you
6 know how you can handle problems between
7 management and union members. Because you have
8 experience if there is conflict, you have to
9 resolve it right there. That's the right way to
10 do it.

11 Q. And Jay was a delegate, wasn't he?

12 A. For one year.

13 Q. I think it was more than that, but
14 that's okay.

15 Did you think that was an important
16 qualification for him in his favor?

17 A. I don't see it that way. I don't
18 see it that way. He could have been delegate by
19 the peers. It is different. I don't know, the
20 waiters are different. They're different
21 people. They're there for different -- it is
22 different ways.

23 Q. Did you think that, that Jay had
24 less knowledge of the job than you did?

25 A. Less knowledge, definitely.

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2 MR. SCHWARTZ: We don't know. In
3 the file, the way you gave us the file,
4 it comes before -- it comes right after
5 the first round of interviews.

6 MS. STOLL: Okay.

7 MR. SCHWARTZ: Okay.

8 BY MS. STOLL:

9 Q. Do you think that he was interviewed
10 by Heiko before March 17 or after March 17?

11 A. After. It was after. After April,
12 I think.

13 Q. And you were interviewed by
14 Christian Hommerich after March 17?

15 A. Yes.

16 Q. Your second interview by Bill
17 Spinner was after March 17?

18 A. Right. Right.

19 Q. Okay.

20 Is it your belief that the union
21 itself, not the captains, but the union itself
22 influenced the hotel's decision about who to
23 select?

24 A. I think so.

25 Q. And why do you believe that?

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A. Why?

Q. Yes.

4 A. Because every delegate is reviewed
5 by the peers to become captain. The waiter is
6 not a delegate -- a waiter there is promoted as
7 captain, it never happened. All the ones who
8 have been a delegate, I think the union is like,
9 how you call it, recommends to be -- that person
10 to be the captain.

11 Q. But you were a delegate and an
12 assistant delegate?

13 A. Yes.

14 Q. So that could have been helpful to
15 you?

16 A. Yes.

17 Q. Do you think that the union was
18 discriminating on the basis of age when it
19 recommended delegates, if it did?

20 A. I don't know. I don't know about
21 that. I don't know. I don't know if they
22 discriminate or not. I don't know.

23 MS. STOLL: I hate to do this. I
24 don't have that much more, but I really
25 have to take this call.

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2 Off the record.

3 (Whereupon, at 3:52 p.m., a
4 recess was taken until 4:49 p.m.)

5 MS. STOLL: Back on the record.

6 Would you read back the last
7 question?

8 (Record read.)

9 BY MS. STOLL:

10 Q. Now, you allege in your complaint
11 that you were denied this promotion because of
12 your age, right?

13 A. Yes. Yes.

14 Q. What is the basis of your belief
15 that you were denied the promotion because of
16 your age?

17 A. Well, I feel like I'm 58 -- I'm
18 going to be 58. The person that they choose was
19 38 years old. So they prefer a younger person,
20 the other waiters that have applied.

21 Q. But nobody said anything to you that
22 would lead you to believe that age was a factor,
23 did they?

24 A. No. It is just my feeling, my
25 personal feeling.

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2 Q. And the fact that the person they
3 picked was younger than you?

4 A. Yes.

5 Q. I'm not quite sure what his age is.

6 A. I think, I mean, it is between 38
7 and 40; so, he wasn't born before I was there.

8 Q. Do you know where he worked before?

9 A. Royal Regal.

10 Q. Do you know how long he had worked
11 there?

12 A. No.

13 Q. Do you know how much experience he
14 has as a banquet waiter?

15 A. No. Looking at the paperwork, I
16 think it says a few years.

17 Q. Is it your belief that the length of
18 your experience should be the most important
19 factor in the decision about who would be
20 captain?

21 A. Yes, I think so, yes, definitely.

22 Q. Do you have more experience than
23 GiGi as a waiter, correct?

24 A. Yes.

25 Q. Do you think you should have been

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picked before her?

A. For seniority, I think, yes.

Q. You think it should be solely by seniority, the selection?

A. Yes.

Q. In the past selections, has it been done by seniority?

A. No.

Q. Is there any requirement in the collective bargaining agreement that the selection be by seniority?

A. No. No.

Q. Do you think that there are other factors that should go into the decision about who was selected to be captain other than length of service?

A. If I think if there are other factors?

Q. Yes.

A. Like what?

Q. I don't know. Do you think it should just be seniority?

A. No. It has to be about knowledge and service, the way you perform the job.

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Q. Did you think that Jay had knowledge of banquet service?

A. He knows some. He knows.

Q. And you don't know how he answered the questions in the interview, of course, right?

A. No. No.

Q. And you also know that all the current captains are in their 60s, some well into their 60s, right?

A. Right.

Q. You said earlier, I just want to explore this a second and then I'm going to wrap it up.

You said earlier that you thought that the union was pushing certain people or recommending certain people?

A. Recommending.

Q. Because they were delegates?

A. Yes.

Q. Do you think that's the reason that you were not selected, or was it age, which was it?

A. I think it was both, age and the

Heiko Kuenstle Interview:

- Review candidate's history and work experience
- Knowledge of Captain's position
- What qualifies you to take on the leadership role of a Captain?
- Ways in which Captains can improve Banquet Service and Guest's experience
- What would you bring to the table if he actually became Captain?

Jay Laut

Recognition of his file in good standing; acknowledgment of his experience in F&B in NYC; recognize numerous letters of commendation.

Jay answered leadership aspect with specifics. Response was concise, clear. He replied that as a Delegate, among his peers, he demonstrated leadership. Issues and discussions would arise among peers; he had to listen, balance concerns, and balance the interest of the Hotel and the colleagues. Demonstrated leadership when discussing issues with the Hotel management; worked towards finding solutions.

Jay reviewed ideas on how to improve level of service for the Guests; he mentioned various suggestions in staffing to enhance service. He focused on Captains spending more quality and individual time with Guests, extending a personable type of service. Jay's knowledge of the CBA, as he mentioned, enables him to fully understand scheduling and staffing, so that the guest experience can be positively affected.

Jay discussed taking pride in extending service to all guests; with his leadership and knowledge of booking employees and The Pierre clientele, he spoke of setting the Hotel apart from competitors.

Strong Candidate; provided specifics; strong qualifications